



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201, 202

[Docket No. 2016-8]

Group Registration of Contributions to Periodicals

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to amend the regulation governing the group registration option for contributions to periodicals to reflect certain upgrades that will soon be made to the electronic registration system. The proposed rule will require groups of contributions to be filed through the Office's electronic registration system. In addition, it will modify the deposit requirement for this option by requiring applicants to submit their contributions in a digital format and to upload those files through the electronic system. The proposed rule will increase the efficiency of the registration process for both the Office and copyright owners alike.

DATES: Comments on the proposed rule must be made in writing and must be received in the U.S. Copyright Office no later than [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through

regulations.gov. Specific instructions for submitting comments are available on the Copyright Office website at <http://copyright.gov/rulemaking/grcp/>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the Internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202-707-8040.

SUPPLEMENTARY INFORMATION:

I. Background

When Congress enacted the Copyright Act of 1976, it authorized the Register of Copyrights (the “Register”) to issue regulations specifying the administrative classes of works for the purpose of seeking a registration, and the nature of the deposit required for each such class. In addition, Congress gave the Register the discretion to allow groups of related works to be registered with one application and one filing fee, a procedure known as “group registration.” *See* 17 U.S.C. 408(c)(1). Pursuant to this authority, the Register issued regulations permitting the U.S. Copyright Office (the “Office”) to issue group registrations for certain limited categories of works, provided that certain conditions have been met. *See generally* 37 CFR 202.3(b)(5)-(10).

Without prejudice to the Register’s general authority to create group registration options under section 408(c)(1) of the Copyright Act at the Register’s discretion, Congress also specifically directed the Register, under section 408(c)(2), to issue regulations allowing works by the same individual author to be registered as a group, if those works were first

published within a twelve-month period as contributions to periodicals (including newspapers).¹ 17 U.S.C. 408(c)(2). In particular, section 408(c)(2) states that “the Register of Copyrights shall establish regulations specifically permitting a single registration for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, within a twelve-month period, on the basis of a single deposit, application, and registration fee, under the following conditions—(A) if the deposit consists of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published; and (B) if the application identifies each work separately, including the periodical containing it and its date of first publication.” *Id.*

As the legislative history explains, allowing “a number of related works to be registered together as a group represent[ed] a needed and important liberalization of the law.” H.R. REP. NO. 94-1476, at 154 (1976); S. REP. NO. 94-473, at 136 (1975). Congress recognized that requiring applicants to submit separate applications for certain types of works may be so burdensome and expensive that authors and copyright owners may forgo registration altogether, since copyright registration is not a prerequisite to copyright protection. *Id.* If copyright owners do not submit their works for registration under this permissive system, the public record will not contain any information concerning those works. This creates a void in the public record that diminishes the value of the Office’s

¹ A bill introduced last year in Congress would maintain the Office’s general authority to create group registration options, but would eliminate the provision specifically directing the Office to establish a group option for contributions to periodicals and specifying the precise requirements for that option. See Copyright Office for the Digital Economy Act, H.R. 4241, 114th Cong., § 3(b)(1) (2015).

database. At the same time, when large numbers of works are bundled together in one application, information about the individual works may not be adequately captured. Therefore, group registration options require careful balancing of the need for an accurate public record and the need for an efficient method of facilitating the registration of such works.

II. The Current Group Registration Option for Contributions to Periodicals

In 1978, the Office issued an interim rule that established a procedure for registering groups of contributions to periodicals. *See* 43 FR 965 (Jan. 5, 1978). This interim rule is largely still in effect today, with the exception of one amendment discussed below. *See* 37 CFR 202.3(b)(8). The Office refers to this procedure as a “group registration for contributions to periodicals” or “GRCP.” Applicants may use this option if they satisfy the requirements set forth in the regulation. First, all the contributions must be created by the same individual, and none of them can be a work made for hire. *Id.* § 202.3(b)(8)(i)(A), (B). Second, all the works must be first published as a contribution to a periodical, and they must be published within a twelve-month period (*e.g.*, October 1, 2014 through September 30, 2015). In other words, the contributions do not have to be published during the same calendar year, but “the earliest and latest contributions must not have been first published more than twelve months apart.” *Id.* § 202.3(b)(8)(i)(C) n.2. And, third, if the contributions were first published before March 1, 1989, each contribution must contain an appropriate copyright notice. *Id.* § 202.3(b)(8)(i)(D).

The current regulation states that the applicant must complete and submit a paper application using Form TX, Form VA, or Form PA. It also states that the application

“should be filed in the [administrative] class appropriate to the nature of authorship in the majority of the contributions.”² *Id.* 202.3(b)(8)(ii)(A) & n.3. For instance, Form TX should be used if the group primarily contains textual material (such as articles, editorials, essays, etc.), Form VA should be used if the group primarily contains visual material (such as photographs, cartoons, illustrations, etc.), and Form PA should be used if the group primarily contains works of the performing arts (such as music, sound recordings, dramas, etc.). In addition, the applicant must complete and submit an “adjunct form” known as Form GR/CP, which is specifically designed for providing information about the particular group of contributions that is being registered. *Id.* § 202.3(b)(8)(ii)(B).

In all cases, the application must “contain the information required by the form and its accompanying instructions.” *Id.* § 202.3(b)(8)(ii)(A), (B). The instructions for Form GR/CP state that the application must identify “each contribution separately, including the periodical containing it and its date of first publication.”³ Form GR/CP (http://copyright.gov/forms/formgr_tx.pdf). Specifically, applicants are instructed to provide the title of each contribution that is included in the group, the title of the periodical where each contribution was first published, the volume and issue number (if any) and issue date for each periodical, and the page number where each contribution appeared. The instructions for Form GR/CP also state that the applicant must satisfy one other requirement: The copyright claimant for each contribution must be the same person or organization. This

² There is a limited exception to this rule that is set forth in footnote 3 to the current regulation. As discussed in Section III.A.1 below, that exception is now obsolete. Therefore, the Office is proposing to remove footnote 3 from the regulation.

³ This same language appears in section 408(c)(2)(B) of the statute, as well as the legislative history for that provision. H.R. REP. NO. 94-1476, at 155 (1976); S. REP. NO. 94-473, at 137 (1975).

requirement does not appear in the current regulation, although it has appeared in the instructions for Form GR/CP since at least July 2012.

Under the current regulations there is no limit on the number of contributions that may be registered with the GRCP option. The current regulations also provide that the applicant must submit the contributions in the precise form in which they were first published, and the copies must be submitted in a physical – rather than a digital – form.

When the Office established the group option for contributions to periodicals, the regulation stated that the applicant must submit “one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published.” *See* 43 FR at 967. The **Federal Register** notice announcing this rule explained that the deposit requirements for this group option “essentially follow the conditions set forth in [section 408(c)(2) of] the statute.” *Id.* at 966. This imposed a hardship on applicants who did not have a copy of the entire issue or the entire section where the contribution was first published. To address this concern, the Office began granting special relief from the deposit requirements on a case-by-case basis and allowed applicants to submit their works in other formats. *See* 67 FR 10329 (Mar. 7, 2002).

Based on this experience, the Office amended the regulation in 2002 to allow applicants to submit their contributions in any of the following physical formats: (i) one copy of the entire issue of the periodical that contains the contribution; (ii) one copy of the entire section of a newspaper that contains the contribution; (iii) tear sheets or proof copies of the contribution; (iv) a photocopy of the contribution; (v) a photocopy of the entire page from the periodical that contains the contribution; (vi) the entire page from the periodical

that contains the contribution, either cut or torn from the periodical; (vii) the contribution cut or torn from the periodical; (viii) photographs or photographic slides of the contribution, provided that the content of the contribution is clear and legible; or (ix) photographs or photographic slides of the entire page from the periodical that contains the contribution, provided that the content of the contribution is clear and legible. *See* 37 CFR 202.3(b)(8)(i)(E); 67 FR at 10329. The Office explained that expanding the list of acceptable formats would be “broadly consistent” “with the spirit of administrative flexibility Congress indicated the Register had in order to ensure that the deposit requirement was reasonable and non-burdensome for the applicant.” 67 FR at 10329 (citing H.R. REP. NO. 94-1476, at 150-55 (1976)). It also explained that this would not diminish the quality of the public record, because applicants were expected to provide bibliographic information on Form GR/CP, which could be used to identify the periodicals where the contributions were first published (even if the applicant did not submit a copy of the actual publications). *See id.*

III. The Proposed Rule

The Office is proposing to amend the regulation that governs the group registration option for contributions to periodicals (the “Proposed Rule”). As explained in greater detail below, the Proposed Rule will make several notable changes to the Office’s GRCP regulation. First, it will improve the efficiency of the GRCP option by requiring applicants to register their contributions through the Office’s electronic registration system (instead of submitting a paper application). Second, it will modify the eligibility criteria for the GRCP option by providing a more specific definition of the term “periodical,” and by specifically

requiring the contributions to be owned by the same copyright claimant. Third, it will require applicants to register their contributions either in Class TX or Class VA (but not Class PA), and to identify the date of publication for each contribution and the periodical where each contribution was first published. Fourth, it will modify the deposit requirements for this option by requiring applicants to submit a digital copy of each contribution and to upload these copies through the electronic registration system (instead of submitting a physical copy of each contribution).

The Proposed Rule also memorializes the Office's longstanding position regarding the scope of a registration for a group of contributions to periodicals. It also confirms that the Office may refuse to issue a group registration or may cancel a group registration if it determines that a party failed to comply with the requirements for that option.⁴

Each of these proposals is discussed below.

A. Application Requirements.

1. Online Registration.

Once this rule is finalized, it will be possible to register groups of contributions to periodicals through the Office's electronic registration system. The Office generally has allowed and encouraged applicants to register their works through this system since 2007. When the system was introduced, applicants could submit their works on an individual basis or as part of a collective work or an unpublished collection. *See* 72 FR 36883, 36884-85

⁴ As discussed in Sections III.F and G, this aspect of the Proposed Rule will apply to any group option that the Office creates under Section 408(c) – including the group options for serials, daily newspapers, daily newsletters, photographs, and databases. The Office is not proposing to make any other changes to those group options as part of this rulemaking.

(July 6, 2007). However, applicants could not submit a group registration covering contributions to periodicals, because the system was not designed to take in the information that is required for such a registration. Instead, applicants were required to file their claims with a paper application submitted on Form TX, Form VA, or Form PA, together with Form GR/CP.

In February 2015 the Office completed a comprehensive analysis of its electronic registration system with input from technical experts and stakeholders. This analysis will support the Office’s long-term goals of creating both a better interface and a better public record. *See* U.S. COPYRIGHT OFFICE, OFFICE OF THE CHIEF INFORMATION OFFICER, REPORT AND RECOMMENDATIONS OF THE TECHNICAL UPGRADES SPECIAL PROJECT TEAM (February 2015), *available at* http://copyright.gov/docs/technical_upgrades/usco-technicalupgrades.pdf; *see also* 78 FR 17722 (Mar. 22, 2013). In December 2015 the Register issued a strategic plan that sets forth the Office’s performance objectives for the next five years. It provides a roadmap for re-envisioning almost all of the services that the Office provides, including how applicants register claims, submit deposits, record documents, share data, and access expert resources. With respect to information technology, the plan calls for “a robust and flexible technology enterprise that is dedicated to the current and future needs of a modern copyright agency.” U.S. COPYRIGHT OFFICE, STRATEGIC PLAN 2016-2020: POSITIONING THE UNITED STATES COPYRIGHT OFFICE FOR THE FUTURE, at 35 (Dec. 1, 2014) (“STRATEGIC PLAN 2016-2020”), *available at* <http://copyright.gov/reports/strategic-plan/USCO-strategic.pdf>. At the direction of

Congress,⁵ the Office also developed a detailed IT plan, and obtained public comments on specific strategies, costs, and timelines for technology objectives. U.S. COPYRIGHT OFFICE, PROVISIONAL INFORMATION TECHNOLOGY MODERNIZATION PLAN AND COST ANALYSIS (Feb. 29, 2016), *available at* <http://www.copyright.gov/reports/itplan/technology-report.pdf>.

In the meantime, the Office has made some enhancements to the current system to benefit authors, the Office, and the public at large. Under the Proposed Rule, applicants will be required to use an online application specifically designed for GRCP as a condition for using this group option. Once the Proposed Rule goes into effect, the Office will no longer accept groups of contributions that are submitted with a paper application on Form TX, Form VA, Form PA, or Form GR/CP. In such cases the Office will ask the applicant to resubmit the claim using the online application, which may change the effective date of registration that is assigned to the claim. The Office invites comment on this proposal, including whether the Office should eliminate the paper applications for GRCP, phase them out after a specified period of time, or continue to offer them for applicants who prefer to use the paper-based system.

When completing the online application, applicants will be asked to provide the same information that is currently requested in Form TX, Form VA, and Form GR/CP. Consistent with Section 408(c)(2) of the statute, applicants will be required to provide the title and date of first publication for each contribution in the group, as well as the title of the periodical where each contribution was first published. If an applicant fails to provide this information, the application will not be accepted by the electronic system. In addition,

⁵ H.R. REP. NO. 114-110, at 16-17 (2015).

applicants will be given an opportunity to provide the International Standard Serial Number (“ISSN”) that has been assigned to the periodical (if any), as well as the volume, number, issue date, and relevant page numbers (if any) for the particular issue where the contribution was first published. If the contributions were published as part of a continuing series of works by the same author, such as an advice column, an editorial column, a cartoon strip, or the like, the applicant will be given an opportunity to provide the title (if any) that may be used to identify the entire series of works.

The current regulation states that an applicant may register a group of contributions to periodicals in Class TX, VA, or PA by submitting the appropriate application for that class. 37 C.F.R. 202.3(b)(8)(ii)(A) & n.3. The Proposed Rule, however, will allow applicants to register their claims only in Class TX or Class VA, and will eliminate the provision that allows a group of contributions to be registered in Class PA. The Office routinely registers contributions to periodicals in Class TX and Class VA, but has no institutional memory of having ever registered a claim in Class PA. Presumably, this is due to the fact that it would be extremely unusual for a musical work, a dramatic work, a choreographic work, a pantomime, a motion picture, or an audiovisual work to be first published as a contribution to a periodical.

The Proposed Rule states that applicants should register their claims in Class TX if a majority of the contributions predominantly consist of text, and should register their claims in Class VA if a majority of the contributions predominantly consist of photographs, illustrations, artwork, or other visual material. A similar provision appears in the current regulation; the Proposed Rule simply reiterates this requirement.

As discussed above, the current regulation also contains a limited exception to this rule, which is set forth in footnote 3 to the regulation. *See* 37 CFR 202.3(b)(8)(ii)(A) n.3. The Proposed Rule will eliminate this footnote, because it is obsolete.

When Congress enacted the Copyright Act of 1976 it contained a provision known as the “manufacturing clause,” which was set forth in Section 601 of the statute. Briefly stated, that provision prohibited the importation or distribution “of copies of a work consisting preponderantly of nondramatic literary material that is in the English language,” unless that material was “manufactured in the United States or Canada.” 17 U.S.C. 601 (1978) (repealed by Pub. L. 111-295, § 4(a), 124 Stat. 3180 (2010)). Footnote 3 to the regulation that governs GRCP contains similar language. It states that “if any of the contributions consists preponderantly of nondramatic literary material that is in the English language, the basic application for the entire group should be submitted on Form TX.” 37 CFR 202.3(b)(8)(ii)(A) n.3. The reason for this limitation is that when the Office adopted the regulation in 1978, Form TX contained a space that asked the applicant to identify the country where the copies were printed. The Office used this information to determine whether the work was subject to the manufacturing clause. (The Office did not include this space on Form VA or Form PA, because as mentioned above, the manufacturing clause only applied to nondramatic literary works.)

The manufacturing clause expired in 1986, Congress removed that provision from the statute in 2010, and as a result, the Office no longer asks for “country of origin” information on Form TX. Pub. L. No. 97-215, 96 Stat. 178, 178-79 (1982); Pub. L. No. 111-295, § 4(a), 124 Stat. 3180, 3180 (2010). Thus, footnote 3 to the current regulation no

longer serves any purpose.

2. Supplementary Registration.

A supplementary registration is a special type of registration that may be used “to correct an error in a copyright registration or to amplify the information given in a registration,” including a registration for a group of related works. 17 U.S.C. 408(d). Specifically, it identifies an error or omission in an existing registration (referred to herein as a “basic registration”) and places the corrected information or additional information in the public record. The Office often refers to this type of registration as a “CA,” which stands for “correction and amplification.”

The Office is issuing a separate notice of proposed rulemaking (published elsewhere in this volume of the **Federal Register**, and referred to herein as the “CA Rulemaking”) that will modify the regulation that governs this procedure. Under the rule proposed in the CA Rulemaking, applicants will be required to file an online application in order to correct or amplify the information set forth in a basic registration for any work that is capable of being registered through the electronic system, rather than filing a paper application. This online-filing requirement will apply to supplementary registrations for groups of contributions to periodicals – even if those contributions were originally registered with a paper application submitted on Forms TX, VA, and GR/CP. When the rule proposed in the CA Rulemaking goes into effect, applicants will be required to file an online application in order to correct or amplify a basic registration for a GRCP claim. If an applicant attempts to use a paper application, the Office will ask the applicant to resubmit the claim using the online form.

The Office is inviting comment on this proposal, including whether the Office should eliminate the paper application for seeking a supplementary registration, phase out this option after a specified period of time, or continue to offer this option for applicants who prefer to use the paper-based system. Comments concerning this proposal should be submitted as part of the CA Rulemaking, and should not be submitted as part of this rulemaking on GRCP.

3. Policy Considerations Supporting Online-only Registration.

A substantial majority of the U.S. population has access to the internet,⁶ and therefore, the Office expects that most authors will be able to use the electronic system.⁷ That said, the Office recognizes that millions of Americans do not have broadband service, and recognizes that eliminating the paper application may impose a burden on authors who fall within that segment of the population.⁸ Nevertheless, the Office believes that the benefits of requiring applicants to use the online application outweigh the potential burden on authors who do not have direct access to the internet.

⁶ The Pew Research Center found that 84% of adults use the internet, including 85% of the people in urban and suburban communities and 78% of the people in rural communities. PEW RESEARCH CENTER, AMERICANS' INTERNET ACCESS: 2000-2015, at 2, 10 (June 26, 2015), *available at* http://www.pewinternet.org/files/2015/06/2015-06-26_internet-usage-across-demographics-discover_FINAL.pdf.

⁷ Approximately 94% of the claims submitted in fiscal year 2015 were filed through the electronic system, while 6% of the claims were submitted on a paper application.

⁸ The Federal Communications Commission reported that 17% of the population does not have access to a broadband service with connection speeds of twenty-five megabits per second ("mbps") for downloads and three mbps for uploads. This figure includes 8% of the people who live in urban areas, 53% of the people in rural areas, and 63% of the people in U.S. territories and Tribal lands. FEDERAL COMMUNICATIONS COMMISSION, 2015 BROADBAND PROGRESS REPORT 4 (Jan. 29, 2015), *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-10A1.pdf.

Providing title and publication information with a paper application can be tedious and time consuming, especially when applicants submit dozens or even hundreds of contributions in a group registration. Examining these types of claims also imposes substantial burdens on the Office, because the cataloging information for each contribution must be copied from the application and typed into the Office's electronic system by hand. In some cases, examiners have spent an entire day processing a single claim, which has resulted in corresponding delays in issuing certificates of registration. Moreover, the increasing demand on the Office's limited resources has had an adverse effect on the examination of other types of works within the Literary and Visual Arts Divisions.

If an author does not have broadband at home, at the home of a relative, a friend, or a neighbor, or at her place of employment, there are other options for registering a group of contributions to periodicals. If the copyright owner has a tablet or laptop, she could complete and submit the online application at a coffee shop, a bookstore, or any other place where wi-fi or cellular service is available.⁹ She could log into the electronic system at a public library or other institution that provides computers with internet access.

Alternatively, the author could hire an attorney to submit the application on her behalf,

⁹ When filing an application for a supplementary registration there is no need to upload a copy of the work that is covered by the basic registration. Thus, applicants will be able to submit these types of claims with a tablet or other wi-fi enabled device. In some cases, the registration specialist may need to compare the information provided in the application for supplementary registration with the copy of the work that was submitted with the application for the basic registration. For instance, this may be necessary if the supplementary registration changes the publication status of the work or adds additional authors to the registration record. If the Office does not have a copy of the work in its possession, the registration specialist may ask the applicant to submit a replacement copy. *See Compendium* section 1802.9(C). But in all cases, the replacement copy could be sent by first class mail, courier, or hand delivery; the copy does not need to be uploaded to the electronic system (though this would be an option if the applicant has broadband service).

either by paying for the attorney's services or by obtaining *pro bono* representation.¹⁰ The Office also notes that a number of companies will prepare an application and file it with the Office for a fee. These companies typically provide this service for authors who wish to register a single work, but they could conceivably expand their offering to include groups of contributions to periodicals.

Congress gave the Office broad authority to establish the requirements for group registration options. 17 U.S.C. 408(c)(1). For the foregoing reasons, the Office believes that requiring applicants to submit an online application as a condition for seeking a registration for a group of contributions to periodicals is a reasonable trade-off for improving the overall efficiency of the group registration process. Nonetheless, the Office invites comment on this aspect of the Proposed Rule.

B. Eligibility Requirements.

This section discusses the eligibility requirements for the group option for contributions to periodicals. Applicants that fail to satisfy these requirements will not be permitted to use this option.

1. Restating the Existing Eligibility Requirements

The Proposed Rule improves the readability of the regulation by restating the eligibility requirements for this group option, including the requirements involving authorship, work made for hire, first publication, and notice. The changes in language are

¹⁰ The Office does not require applications to be prepared or submitted by an attorney. In certain special cases the Office may suggest that the copyright owner consider seeking legal advice, but the Office does not furnish the names of copyright attorneys, publishers, agents, or other similar information. *See* 37 CFR 201.2(a)(2).

simply intended to clarify these requirements and do not represent a substantive change in policy.

2. Definition of “Periodicals”

The Proposed Rule provides a definition for the term “periodicals.” It states that a periodical is a collective work that is issued or intended to be issued on an established schedule in successive issues that are intended to be continued indefinitely. It recognizes that each issue of a periodical usually bears the same title, as well as numerical or chronological designations. It also provides examples of works that typically qualify as a periodical, such as newspapers, magazines, newsletters, journals, bulletins, annuals, the proceedings of societies, and other similar works. This definition has appeared in the *Compendium of U.S. Copyright Office Practices* since December 22, 2014, and is consistent with the Office’s longstanding definition for the term “serial,” which has been in effect since 1991. See U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices*, section 1115.1 (3d ed. 2014) (hereinafter the “*Compendium*”); 37 CFR 202.3(b)(1)(v); 56 FR 7812, 7813 (Feb. 26, 1991).

An applicant may be permitted to register articles, blog entries, artwork, photographs, or other contributions that were first published in an electronically printed (“ePrint”) publication if that publication fits within the regulatory definition of a “periodical.” Specifically, an ePrint publication may be considered a periodical for purposes of registration if it is fixed and distributed online or via email as a self-contained work, such as a digital version of a tangible newspaper, magazine, newsletter, or similar publication. For example, many companies publish electronic newsletters that contain

articles on a particular subject, and distribute these publications to their subscribers either online or via email. An article published in an ePrint newsletter could be considered a contribution to a periodical under the Proposed Rule if each issue of the newsletter is fixed and distributed as a self-contained work and if the content of each issue does not change once it has been distributed.

By contrast, a website would not be considered a periodical under the Proposed Rule. Websites are typically updated on a continual basis rather than an established schedule. The updates are not made in successive issues that can be recognized as discrete, self-contained collective works, and they do not contain numerical or chronological designations that distinguish one update from the next. For these reasons, an applicant could register a group of articles that were first published in the print or ePrint edition of a magazine. Likewise, an applicant could register a group of articles that were first published in a print or ePrint edition of a magazine and simultaneously published on the publisher's website. However, an applicant could not register a group of articles that were published solely on a website.

The Office is aware of the need for establishing new and updated practices for examining and registering complex or emerging areas of authorship. The Register's strategic plan calls for the Office to "[a]ssess special issues relating to registration and deposit protocols for emerging forms of digital dissemination of works across the spectrum of creative industries," and to "[i]dentify and make appropriate changes to Office policy and procedures in response to . . . emerging business standards." STRATEGIC PLAN 2016-2020 at 11. The rule proposed in this notice represents an interim improvement to the current

electronic registration system, and is intended to provide a sound foundation for creating other registration options within the next five years.

3. Identifying the Contributions in the Group.

The Proposed Rule confirms that the application must identify each contribution that is included in the group, including the date of publication for each contribution and the periodical in which it was first published. Although the statute expressly states that this requirement should be included in the regulation, it does not appear in the current rule. 17 U.S.C. 408(c)(2)(B). Instead, the regulation states that the application “shall contain the information required by the form and its accompanying instructions,” and in turn, the instructions for Form GR/CP state that this information should be included in the form. 37 CFR 202.3(b)(8)(ii)(A); *see also* United States Copyright Office, Adjunct Application Form GR/CP, available at http://copyright.gov/forms/formgr_tx.pdf. The Proposed Rule reconciles the regulation with the statute and the Office’s current practices.

4. Ownership Requirements.

The Proposed Rule confirms that the copyright claimant for each contribution in the group must be the same person or organization. This is in addition to the requirement that the contributions must be created by the same individual, although the author and claimant may be different persons. As noted in Section II, this requirement has appeared in the instructions for Form GR/CP for some time, but it does not appear in the current regulation. The change is simply intended to reconcile the regulation with the Office’s longstanding practices. The Office will continue to register contributions authored by an individual who transferred his or her copyrights to the copyright claimant, provided that the claimant owns

all of the exclusive rights in those contributions and provided that the application contains an appropriate transfer statement explaining how the claimant obtained those rights.

5. Number of Contributions in the Group.

The statute directs the Office to establish a procedure for registering a group of works by the same individual, but it does not specify the total number of works that may be included within each group. Although the statute requires the Register to establish a group registration procedure for contributions to periodicals that are “*all* first published as contributions to periodicals, within a twelve-month period,” 17 U.S.C. 408(c)(2) (emphasis added), that is not the same thing as saying that an author should be permitted to register “all” such contributions with one application and one filing fee. If that is what Congress intended, then presumably it would have directed the Register to establish a procedure for registering “all” works by the same individual author (rather than “a group of works”). *Id.*

Although the Office thus has the authority to limit the number of contributions that may be included within each group, it has decided not to impose any limits at this time. Once the Proposed Rule has been implemented, the Office will monitor these group registrations to determine if any restrictions may be warranted in the future.

In the meantime, the Office encourages authors to submit their contributions on a quarterly basis (*i.e.*, every three months), instead of submitting them on an annual or semi-annual basis. As with any work of authorship, a contribution to a periodical must be registered in a timely manner to seek statutory damages and attorney’s fees in an infringement action. Specifically, an author may seek statutory damages and attorney’s fees if the contribution was registered (i) before the infringement commenced or (ii) within three

months after the first publication of that work. 17 U.S.C. 412. To secure these benefits, the Office encourages authors to register their contributions within three months after they were published. By doing so, authors will preserve their ability to seek statutory damages and attorney's fees for any infringements that may occur after the effective date of registration, as well as any infringements that may occur within three months after the publication of each work. For example, if the first contribution in the group was published on June 1, 2016 and the last contribution was published on September 1, 2016, it would be advisable to file a complete application, deposit, and filing fee on or before September 1, 2016. By doing so, the author will preserve his or her ability to seek statutory damages and attorney's fees for any infringements that began after the effective date of registration (*i.e.*, after September 1, 2016), as well as any infringements that began within three months after the date of publication for each contribution in the group.

C. Deposit Requirements.

To register a group of contributions to periodicals under the Proposed Rule applicants must submit a complete copy of each contribution that is included in the group. This will ensure that the Office receives the entire content of each contribution for the purpose of examining, indexing, and documenting the claim.

Applicants may satisfy this requirement by submitting one copy of the entire issue of the periodical in which the contribution was first published. If the contribution was first published in a newspaper, applicants may satisfy this requirement by submitting one copy of the entire section of the newspaper in which the contribution was first published. Both of these options appear in the existing rule and are required to be included by statute. 17

U.S.C. 408(c)(2)(A); 37 CFR 202.3(b)(8)(i)(E).

Alternatively, applicants may satisfy this requirement by submitting one copy of each contribution in the precise form in which it was first published in the periodical. Specifically, applicants may submit a copy of the particular pages within the periodical where the contribution was first published. This provision essentially mirrors regulations that have been in place since 2002 and, as discussed, is necessary to ensure that authors can readily take advantage of the GRCP option. *See generally* 67 FR 10329.

The Register may, consistently with the statutory scheme, accept deposits other than “one copy of the entire issue of the periodical” and “the entire section in the case of a newspaper” for the GRCP option. 17 U.S.C. 408(c)(2)(A). As mentioned above, section 408(c) gives the Register broad authority to establish group registration options, and to define the nature of the deposit materials for such registrations. *See* 17 U.S.C. 408(c)(1) (“The Register of Copyrights is authorized to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration, and the nature of the copies or phonorecords to be deposited in the various classes specified. The regulations may require or permit . . . a single registration for a group of related works.”). Section 408(c)(2), in turn, requires the Register to establish a particular group registration option with the following conditions: “specifically permitting a single registration for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, within a twelve-month period . . . if the deposit consists of one copy of the entire issue of the periodical, or of the entire section in the case of a

newspaper, in which each contribution was first published.”¹¹ 17 U.S.C. 408(c)(2)(A). The Proposed Rule provides that option. Section 408(c)(2) does not, however, limit the Register’s ability to expand the circumstances where group registration of contributions to periodicals would be accepted. Nor does it limit her ability to provide authors of such contributions with additional accommodations to facilitate their use of this group registration option. To the contrary, section 408(c)(2) makes clear that its terms are “[w]ithout prejudice to the general authority provided under” section 408(c)(1) to create group registration options and define the deposit requirements for those options. *Id.* 408(c)(2). Indeed, to read section 408(c)(2) as *limiting* the Register’s authority in this regard would be contrary to the overall purpose of the statutory scheme, which was to reduce “administrative problems” and “unnecessary burdens and expenses on authors and other copyright owners” by permitting group registration. H.R. REP. NO. 94-1476, at 154 (1976). Thus, as an exercise of the Register’s general authority in section 408(c)(1), the Office has determined that it may accept formats other than those specifically listed in section 408(c)(2)(A) as deposits for the GRCP option.

In all cases applicants will be required to submit a digital copy of each contribution that is included in a group. Specifically, applicants will be required to submit electronic files in Portable Document Format (“PDF”) or other electronic format specifically approved by the Office. This requirement will apply regardless of whether an applicant submits a

¹¹ Similar language appears in the legislative history for this provision. *See* H.R. REP. NO. 94-1476, at 154 (1976) (“It is further required that the deposit consist of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution is first published.”); S. REP. NO. 94-473, at 137 (1975) (same).

copy of an entire issue of a periodical, an entire section of a newspaper, or the specific pages from the periodicals where the contributions were first published.

Applicants will be required to upload the digital copies through the electronic registration system. When uploading the files, applicants will be strongly encouraged to save them in a .zip file and then upload the .zip file to the system. In all cases, the size of each uploaded file may not exceed 500 megabytes, although applicants may digitally compress the contributions to comply with this limitation.

Under the current regulation, applicants must submit a physical copy of each contribution, such as photographic prints, contact sheets, or slides; camera-ready proof copies; or pages or clippings cut or torn from a newspaper, magazine, or other publication. Under the Proposed Rule, the Office will no longer accept physical copies. Likewise, the Office will not accept digital copies that have been saved onto a disc, a flash drive, or other physical storage device that is delivered to the Office by mail, by courier, or by hand delivery. In all cases, applicants will be required to upload a digital copy of each contribution via the electronic registration system.

Requiring applicants to upload their digital copies to this system will increase the efficiency of the group registration process. Based on the Office's experience, electronic submissions take less time to process, they are easier to track, and they are less burdensome to store than physical copies. From the applicant's perspective, electronic submissions should be more convenient and less expensive than submitting digital copies on a physical storage device, and if the claim is approved, the applicant should receive a certificate of registration in a more timely manner.

Moving to electronic deposits may also provide copyright owners with certain legal benefits. When the Office registers a group of contributions to periodicals it assigns an effective date of registration to the claim. This determination is based on the date that the Office received the application, the filing fee, and the deposit. When an applicant uploads a digital copy to the electronic system, the Office typically receives the application, the filing fee, and the deposit on the same date. By contrast, when an applicant delivers a physical copy to the Office by mail, courier, or hand delivery, the deposit may not be received for days or even weeks after the date that the application and filing fee were submitted.

Requiring applicants to submit a scanned copy of their contributions in the precise form in which they were first published is consistent with the legislative history, which states that “[a]s a general rule the deposit of more than a tear sheet or similar fraction of a collective work is needed to identify the contribution properly and to show the form in which it was published.” H.R. REP. NO. 94-1476, at 153 (1976). It also serves an evidentiary purpose. It gives the examiner an opportunity to compare the deposit with the title, date of publication, issue number, page number, or other information that is set forth in the application (although in practice examiners do not conduct this type of analysis for every contribution in the group). If a particular contribution becomes involved in litigation, the deposit could be used to verify that the contribution was published in a particular periodical on a particular date.

Applicants who are unable to submit their contributions in the precise form in which they were first published may request special relief from the deposit requirements. 37 CFR 202.20(d). Likewise, applicants may request special relief if they are unable to submit a

digital copy of their contributions or unable to upload them through the electronic system.

For information concerning special relief, see section 1508.8 of the *Compendium*.

D. Filing Fee.

Under the Proposed Rule, the applicant will be required to pay the same filing fee that is currently set forth in the Office’s fee schedule, namely \$85 per claim.

In 2012 the Office conducted a study pursuant to Section 708 of the Copyright Act, which authorizes the Register to establish, adjust, and recover fees for certain services that the Office provides to the public. After reviewing its costs, the Office decided to increase the filing fee for GRCP from \$65 to \$85, noting that these types of claims are “labor-intensive.”¹² U.S. COPYRIGHT OFFICE, PROPOSED SCHEDULE AND ANALYSIS OF COPYRIGHT FEES TO GO INTO EFFECT ON OR ABOUT APRIL 1, 2014, at 17 (Nov. 14, 2013).

Section 708(b) authorizes the Register to adjust the fees that the Office charges for certain services (including the fee for seeking a group registration), but before doing so the Register must conduct a study of the costs incurred by the Office for registering claims, recording documents, and providing other services. In conducting this study, the Register must consider the timing of any fee adjustments and the Office’s authority to use the fees consistent with its budget. 17 U.S.C. 708(b)(1). Section 708(b) provides that the Register may adjust these fees no “more than necessary to cover the reasonable costs incurred by the Copyright Office for . . . [such services], plus a reasonable inflation adjustment to account for any estimated increase in costs.” 17 U.S.C. 708(b)(2). It also provides that the Office must submit the proposed fee schedule to Congress, and that the Office may implement the

¹² This increase went into effect on May 1, 2014.

schedule 120 days thereafter unless Congress enacts a law stating that it does not approve the schedule. 17 U.S.C. 708(b)(5).

Once the Proposed Rule has been implemented, the Office will monitor the cost of processing GRCP claims to determine if future fee adjustments may be warranted. The Office will use this information in conducting its next fee study.

E. The Scope of a Group Registration.

The Proposed Rule memorializes the Office’s longstanding position regarding the scope of a registration for a group of contributions to periodicals.

When the Office issues a group registration it prepares one certificate of registration for the entire group and assigns one registration number to that certificate. The Proposed Rule clarifies that a registration for a group of contributions to periodicals covers each contribution in the group, and each contribution is registered as a separate “work.” This understanding is consistent with the statutory scheme. The legislative history makes clear that group registration was “a needed and important liberalization of the law [then] in effect,” which to that point had required “separate registrations where related works or parts of a work are published separately.” H.R. REP. NO. 94-1476, at 154 (1976). In particular, Congress noted that “the technical necessity for separate applications and fees has caused copyright owners to forego copyright altogether.” *Id.* Given that context, it would be anomalous for works registered as part of a group registration application to be given lesser protection than if they had been registered through separate applications.

For similar reasons, the Proposed Rule also clarifies that when a group of works are registered under GRCP, the group as a whole is not considered a compilation or a collective

work. Instead, the group is merely an administrative classification created solely for the purpose of registering multiple contributions with one application and one filing fee. *See* 17 U.S.C. 408(c)(1) (“Th[e] administrative classification of works has no significance with respect to the subject matter of copyright or the exclusive rights provided by this title.”). Although an applicant may exercise some judgment in selecting the contributions that are included within a particular group, that decision does not necessarily constitute copyrightable authorship. The selection is based on the regulatory requirements for GRCP, and any coordination or arrangement of the contributions is merely an administrative formality that facilitates the examination of the works.

Likewise, the Proposed Rule clarifies that the group is not considered a derivative work. When a group of contributions are combined together for the purpose of facilitating registration those works are not “recast, transformed, or adapted” in any way, and the group as a whole is not “a work based upon one or more preexisting works” because there is no copyrightable authorship in simply following the administrative requirements for GRCP. 17 U.S.C. 101 (definition of “derivative work”).

F. Refusals to Register.

The Proposed Rule confirms that the Office may refuse to issue a group registration if it determines that the applicant failed to satisfy the requirements set forth in the statute or regulations.¹³ 17 U.S.C. 410(b) (stating that the Register “shall refuse registration and shall

¹³ A similar requirement has appeared in the regulation governing the group registration option for serials since 1990. *See* 55 FR 50556, 50556-57 (Dec. 7, 1990). That regulation states that the Office may revoke the privilege of registering a group of serials if a publisher fails to comply with the deposit requirement for that option. 37 CFR 203.3(b)(6)(iv).

notify the applicant in writing of the reasons for such refusal” “[i]n any case in which [she] determines that . . . the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason”).

G. Cancellation.

The Proposed Rule confirms that the Office may cancel a group registration under § 201.7(c)(4) of the regulations if it determines, after the registration has issued, that the requirements for that option were not met. In such cases, the Office will send a written notice to the correspondent and claimant named in the registration at the addresses specified in the registration record. The Office will describe the defect in the registration and will inform the parties that the registration may be cancelled if they fail to resolve the defect in a timely manner.

In a related vein, the Proposed Rule makes some clarifying edits to the Office’s cancellation regulation, section 201.7(c)(4). First, it makes clear, consistent with existing Copyright Office practice, that the regulation only provides representative examples of situations where the Office may cancel a registration (rather than an exhaustive list of situations where cancellation may be warranted). Second, the Proposed Rule also removes one of the examples from that list—namely section 201.7(c)(4)(ix), which states that the Office may cancel a registration for a work published after January 1, 1978 if it determines that “the only claimant given on the application was deceased on the date the application was certified.” This is inconsistent with current practices of the Copyright Office.

The Office recently conducted a comprehensive review of its internal policies in conjunction with the revision of the *Compendium*. The *Compendium* explains that if the

Office discovers that the named claimant died before the work was submitted or before it has been approved for registration, the Office may ask the applicant to provide the name of the current claimant. In such cases, the Office will accept an application filed by or on behalf of the person or organization that owns all of the exclusive rights that initially belonged to a deceased claimant, such as the claimant's estate, a devisee, or an heir. Likewise, the Office will accept an application that names a deceased author as the copyright claimant if that author is the only party who is eligible to be named as the claimant, as might be the case where no one owns all of the exclusive rights in the work because the author previously transferred those rights to multiple parties. *See Compendium* section 405.5.

H. Technical Amendments.

The Proposed Rule will move the regulation that governs this group option from section 202.3(b)(8) to section 202.4(h).¹⁴ In the future, the Office intends to move all regulations governing the various group options that it has created under section 408(c) of the Copyright Act to section 202.4. This change is intended to improve the readability of the existing regulations, but it does not represent a substantive change in policy.

In addition, the Proposed Rule will incorporate the definitions of “Class TX,” “Class VA,” and “works of the visual arts” that are set forth in section 202.3, and it will confirm that the application may be submitted by any of the parties listed in section 202.3(c)(1), namely (i) the author or copyright claimant of those works, (ii) the owner of any of the

¹⁴ The Office recently issued a notice of proposed rulemaking that would remove the current text of section 202.4 and reserve that section for later use. *See* 81 FR 67940, 67942 (Oct. 3, 2016).

exclusive rights in those works, or (iii) a duly authorized agent of any author, claimant, or owner of exclusive rights.

IV. CONCLUSION.

The Proposed Rule will allow broader participation in the registration system, and increase the efficiency of the group registration process. The Office invites public comment on these proposed changes.

List of Subjects in 37 CFR Part 201

Copyright, General Provisions.

List of Subjects in 37 CFR Part 202

Copyright, Preregistration and Registration of Claims to Copyright.

Proposed Regulation

For the reasons set forth in the preamble, the U.S. Copyright Office proposes amending 37 CFR parts 201 and 202, as follows:

Part 201 – GENERAL PROVISIONS

1. Revise the authority citation for part 201 to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.3 by revising: paragraph (c)(2) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

* * * * *

3. Amend § 201.7 by:

- a. In the last sentence in paragraph (c)(4), adding the phrase “examples of” after the phrase “The following are”.
- b. In paragraph (c)(4)(i), removing the semi-colon and add a period in its place.
- c. In paragraph (c)(4)(ii), removing “1989,” and add in its place “1989” and remove “notice;” and add in its place “notice.” .
- d. In paragraphs (c)(4)(iii) through (viii), removing the semi-colon and add a period in its place.
- e. Removing paragraph (c)(4)(ix) and redesignate paragraphs (c)(4)(x) and (xi) as paragraphs (c)(4)(ix) and (x), respectively.
- f. In newly redesignated paragraph (c)(4)(ix), removing the term “; and ” and add a period in its place.
- g. Adding paragraph (c)(4)(xi).

The addition to read as follows:

§ 201.7 Cancellation of completed registrations.

* * * * *

(c) * * *

(4) * * *

(xi) The requirements for registering a group of related works under section 408(c) of title 17 of the United States Code have not been met.

* * * * *

Part 202 - PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

4. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

5. Amend § 202.3 by:

- a. Revising paragraph (b)(4)(ii).
- b. Removing and reserving paragraph (b)(8).
- c. In paragraph (b)(11)(ii), redesignating footnote 4 as footnote 2 (both in the text of paragraph (b)(11)(ii) and in the footnote itself).
- d. In the text of paragraph (c)(2), removing the reference to footnote “6” and adding in its place a reference to footnote “3”, redesignating footnote 5 as footnote 3, and revising newly redesignated footnote 3.

The revisions to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(4) * * *

- (ii) In the case of an application for registration made under paragraphs (b)(4) through (10) of this section or under § 202.4, the “year of creation,” “year of completion,” or “year

in which creation of this work was completed” means the latest year in which the creation of any copyrightable element was completed.

* * * * *

(c) * * *

(2) * * *

3 In the case of an application to register a group of newspapers, newsletters, or contributions to periodicals under paragraphs (b)(7) or (9) of this section or under § 202.4(h), the deposit shall comply with the respective requirements specified in those paragraphs.

* * * * *

7. Revise § 202.4 to read as follows:

§ 202.4 Group Registration.

(a) This section prescribes conditions for issuing a registration for a group of related works under section 408(c) of title 17 of the United States Code.

(b) *Definitions.* For purposes of this section, the terms *collective work*, *copy*, and *work made for hire* have the meanings set forth in section 101 of title 17 of the United States Code, and the terms *claimant*, *Class TX*, *Class VA*, and *works of the visual arts* have the meanings set forth in § 202.3(a)(3), (b)(1)(i), and (b)(1)(iii).

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) [Reserved]

(g) [Reserved]

(h) *Group registration of contributions to periodicals.* Pursuant to the authority granted by 17 U.S.C. 408(c)(2), the Register of Copyrights has determined that a group of contributions to periodicals may be registered in Class TX or Class VA with one application, one filing fee, and the required deposit, if the following conditions are met:

- (1) All the contributions in the group must be created by the same individual.
- (2) The copyright claimant must be the same person or organization for all the contributions.
- (3) The contributions must not be works made for hire.
- (4) Each work must be first published as a contribution to a periodical, and all the contributions must be first published within a twelve-month period (*e.g.*, January 1, 2015 through December 31, 2015; February 1, 2015 through January 31, 2016). For purposes of this section, a periodical is a collective work that is issued or intended to be issued on an established schedule in successive issues that are intended to be continued indefinitely. In most cases, each issue will bear the same title, as well as numerical or chronological designations. Examples include newspapers, magazines, newsletters, journals, bulletins, annuals, the proceedings of societies, and other similar works.
- (5) If any of the contributions were first published before March 1, 1989, those works must bear a separate copyright notice, the notice must contain the copyright owner's name (or an abbreviation by which the name can be recognized, or a generally known alternative designation for the owner), and the name that appears in each notice must be the same.
- (6) The applicant must complete and submit the online application designated for a group of contributions to periodicals. The application must identify each contribution that is included in the group, including the date of publication for each contribution and the periodical in

which it was first published. The application may be submitted by any of the parties listed in § 202.3(c)(1). The application should be filed in Class TX if a majority of the contributions predominantly consist of text, and the application should be filed in Class VA if a majority of the contributions predominantly consist of photographs, illustrations, artwork, or other works of the visual arts.

(7) The appropriate filing fee, as required by § 201.3(c) of this chapter, must be included with the application or charged to an active deposit account.

(8) The applicant must submit one copy of each contribution that is included in the group, either by submitting the entire issue of the periodical where the contribution was first published, the entire section of the newspaper where it was first published, or the specific page(s) from the periodical where the contribution was first published. The contributions must be contained in separate electronic files that comply with § 202.20(b)(2)(iii). The files must be submitted in Portable Document Format (PDF) or other electronic format approved by the Office, and they must be uploaded to the electronic registration system, preferably in a .zip file containing all the files. The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement.

(i) [Reserved]

(j) [Reserved]

(k) [Reserved]

(l) *Refusal to register.* The Copyright Office may refuse registration if the applicant fails to satisfy the requirements for registering a group of related works under this section or § 202.3(b)(5)-(7), (9), or (10).

(m) *Cancellation.* If the Copyright Office issues a registration for a group of related works and subsequently determines that the requirements for that group option have not been met, and if the claimant fails to cure the deficiency after being notified by the Office, the registration may be cancelled in accordance with § 201.7 of this chapter.

(n) *The scope of a group registration.* When the Office issues a group registration under paragraph (h) of this section, the registration covers each work in the group and each work is registered as a separate work. For purposes of registration, the group as a whole is not considered a compilation, a collective work, or a derivative work under sections 101, 103(b), or 504(c)(1) of title 17 of the United States Code.

Dated: November 22, 2016.

Sarang V. Damle
General Counsel and
Associate Register of Copyrights

[BILLING CODE 1410-30-P]

[FR Doc. 2016-28700 Filed: 11/30/2016 8:45 am; Publication Date: 12/1/2016]